

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

State of Oklahoma, et al.,)	
)	
Plaintiffs,)	Civil No. 05-CV-0329 GKF-SAJ
)	
v.)	
)	
Tyson Foods, Inc., et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION
FOR LEAVE TO FILE SURREPLY BRIEF**

Defendants submit the following response to Plaintiffs' Motion for Leave of Court to File a Surreply Brief [Dkt. No.1674] in further opposition to Defendants' Motion to Compel Compliance with the Court's Order on Data Production [Dkt. No. 1605].

Defendants do not object in principle to a surreply by Plaintiffs, but object to Plaintiffs' proposal that they be given nearly three weeks to file that surreply.

Plaintiffs' motion is mistaken in asserting that Defendants' reply raised "new allegations and new matters" not raised in previous submissions. [Dkt. No. 1674 ¶ 1] In fact, Defendants' original motion sought to compel *complete* compliance with the Court's January 2007 Order as to *all* data improperly withheld, and used Plaintiffs' omissions regarding the DNA data as an example. It was Plaintiffs who elected to respond *only* with respect to the DNA data, ignoring the remainder of the motion. Moreover, any new

facts noted in Defendants' reply result from the two additional post-motion document productions that Plaintiffs made in an attempt to avoid the motion.¹

Nevertheless, Defendants do not object in principle to Plaintiffs' submission of a surreply brief. The underlying data Defendants seek and the Court has ordered produced is voluminous, and the Plaintiffs' dozen separate productions over the last year have certainly complicated the record. Defendants believe that the Court should have the most up-to-date and accurate information about what has actually been produced, and, to the extent a surreply helps clarify those facts, both the Court and the parties will benefit.

Nevertheless, Defendants do object to the 20 days Plaintiffs seek to file a surreply to a reply Plaintiffs have had since April 8, 2008. Defendants have already acquiesced in Plaintiffs' requested extension of time to file their response brief. See Dkt. Nos. 1638, 1640. The Court issued its original Order 15 months ago, and the need for the withheld data grows greater every day as the expert deadlines get closer, and Defendants have asked the Court for expedited consideration of the underlying motion.

Plaintiffs have served two supplemental data productions since Defendants filed the motion, and thus must have recently reviewed their data, yet Plaintiffs' response does no more than allude to the "fact-intensive nature" of the issues to try to justify delaying nearly three weeks for their surreply. Should the Court elect to permit Plaintiffs to file a surreply, the Court should set a deadline of Friday, April 18, 2008 for filing and service.

¹ Lest omission be taken as assent, Defendants in fact dispute a number of Plaintiffs' other statements in the Motion for Leave, particularly those concerning Defendants' meet-and-confer efforts. Because those issues do not bear on the propriety or timing of a surreply, however, Defendants will not take the space here to rebut them individually.

Respectfully submitted,

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I certify that on the 14th day of April, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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